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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,191	09/14/2006	Frieder Grieshaber	02894-750US1 06803	7141
26161	7590	12/30/2009		
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER NGUYEN, TUAN VAN	
			ART UNIT 3731	PAPER NUMBER
			NOTIFICATION DATE 12/30/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,191	<b>Applicant(s)</b> GRIESHABER ET AL.	
	<b>Examiner</b> TUAN V. NGUYEN	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12, 13, 15-20, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12, 13, 15-20, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1-23 were pending in this application. Claims 1-23 were examined and rejected in the Office action mailed out on 6/01/09.
2. This Office action is in response to the RCE filed on 11/30/2009.

### ***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after the final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/30/2009 has been entered.

### ***Response to Amendment***

4. Applicant's arguments with respect to the rejection of claims 1-23 under 35 USC § 103 have been fully considered but they are moot in view of new ground of rejection.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. **Claims 1-9, 12, 13, 15-20 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magnus et al. (U.S. 2,423,245) in view of Floessholzer et al. (US Pub. No. 2006/0004383 A1) further in view of Zelickson et al (US 7,354,423).**
8. Magnus discloses (see Fig. 5) a method of removing hair by using an epilator 1 comprising a tape 7, pressure device 20 for applying the tape against the skin, the tape is fed from the pressure device to the deflector devices 8 and the opposing corner of 8. The epilator also includes supply reels 2 and take-up reel 4 (col. 3, line 65 to col. 4, line 29). Magnus discloses the invention substantially as claimed except for the two deflector elements are rotatably suspended, the drive motor which drive the take-up reel, and the drive motor is activated when the epilator apparatus is applied against the skin. However, in an alternative embodiment (Fig.

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- 6) Magnus discloses the roller 33 or deflector element is rotatably suspended. It has been held that substitution of one known element for another to obtain predictable result is old and well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art to replace the deflectors as disclosed in Fig. 5 with two deflectors as disclosed in Fig. 6. Magnus discloses the invention substantially as claimed except for the drive motor for driving the take-up reel, and when the epilator apparatus is applied pressure against the skin activates the switch to activate the drive motor, thereby to drive the take-up reel.
9. However, Floessholzer discloses using drive motor to drive the supply and take up tape is old and well known in the art. It has been held that replacing mechanical component with electro-mechanical component to improve efficiency of the device is old and well known in the art. Therefore, it would have been obvious to replace the thumb wheel 5 of Magnus et al with a drive motor to improve the efficiency of the device.
10. However, Zelickson discloses a device of removing hair from a skin, comprising, among other things: a pressure sensor for actuating the device (col. 7, lines 48-58). It would have been obvious to one of ordinary skill in the art to provide a pressure sensor mechanism to actuate the drive motor of Magnus/Floessholzer only when it is in the position that ready to operate to improve the effectiveness of the device.
11. **Claims 16-20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magnus et al. (U.S. 2,423,245) in view of Floessholzer et**

**al. (US Pub. No. 2006/0004383 A1) further in view of Brown et al (US Pub. No. 2005/0234477).**

12. Magnus discloses (see Fig. 5) a method of removing hair by using an epilator 1 comprising a tape 7, pressure device 20 for applying the tape against the skin, the tape is fed from the pressure device to the deflector devices 8 and the opposing corner of 8. The epilator also includes supply reels 2 and take-up reel 4 (col. 3, line 65 to col. 4, line 29). Magnus discloses the invention substantially as claimed except for the two deflector elements are rotatably suspended, the drive motor which drive the take-up reel, and the drive motor is activated when the epilator apparatus is applied against the skin. However, in an alternative embodiment (Fig. 6) Magnus discloses the roller 33 or deflector element is rotatably suspended. It has been held that substitution of one known element for another to obtain predictable result is old and well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art to replace the deflectors as disclosed in Fig. 5 with two deflectors as disclosed in Fig. 6. Magnus discloses the invention substantially as claimed except for the drive motor for driving the take-up reel, and when the epilator apparatus is applied pressure against the skin activates the switch to activate the drive motor, thereby to drive the take-up reel.
13. However, Floessholzer discloses using drive motor to drive the supply and take up tape is old and well known in the art. It has been held that replacing mechanical component with electro-mechanical component to improve efficiency of the device is old and well known in the art. Therefore, it would have been obvious to replace

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the thumb wheel 5 of Magnus et al with a drive motor to improve the efficiency of the device.

14. However, Brown discloses a device of removing hair from a skin, comprising, among other things: wherein the motor driving the burr is controlled using a proximity switch so that the device does not need to be put down, and nor does the switch need to be touched, to effect control of the motor (paragraph [0010]). It would have been obvious to one of ordinary skill in the art to provide a proximity sensor mechanism to actuate the drive motor of Magnus/Floessholzer only when it is in the position near the skin of the user to improve the effectiveness and conserving the resources of the device.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TUAN V. NGUYEN whose telephone number is (571)272-5962. The examiner can normally be reached on 9:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. V. N./  
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731  
12/22/09